

The CURE

Contract User's Resource for Excellence

The "CURE" is a quarterly newsletter of the State Controller's Office

Volume 10, Issue 1

May 2004

News From The SCO A State Controller's Office Update

CCIT MEETING

DATE & LOCATION CHANGE

The May CCIT (Colorado Contract Improvement Team) meeting will be held on Wednesday, May 26th from 9:00 a.m. - 12:00 noon at the Denver National Guard Armory. The address is 5275 Franklin Street, Denver, (please see page 18 for directions). If you have questions about the meeting, please call Yvonne Anderson at (303) 866-2862.

An agenda is included on page 19.

**What's Inside
this Issue —
Informative
articles about
many issues**

E-MAIL ADDRESS CHANGES

To make sure you do not miss an issue of the CURE or other important state contract information be sure that you keep your e-mail address current by sending changes to Kevin in the SCO CCU at:

kevin.cruise@state.co.us

Central Approvers Names and Numbers

Department of Personnel & Administration (DPA)

State Controller's Office (SCO)

Central Contract Unit:	Phone Number	Fax Number
Phil Holtmann	303-866-3809	303-866-4233
Yvonne Anderson	303-866-2862	303-866-4233

Routing, Distribution and E-mail Updates:

Kevin Cruise	303-866-2127	303-866-3569
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Statutory Violations:

Ron Keller	303-866-3539	303-866-3569
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Human Resource Services (DPA/HRS)

Personal Services Review Program:

Joi Simpson	303-866-5496	303-866-2458
Don Fowler	303-866-4250	303-866-2458

State Buildings and Real Estate Programs (REP)

Larry Friedberg	303-866-3079	
Dana Stansbury	303-866-6141	303-894-7478

Donna Barr (REP)	303-866-4564	303-866-2201
Clark Bolser (REP)	303-866-4759	303-866-2201

State Purchasing (SPO)

Monica Rahman	303-866-6155	303-894-7440
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Office of the Attorney General (AGO)

Robert Bowers	303-866-5027	303-866-4139
Heidi Dineen	303-866-5437	303-866-4139
Bea Pagette	303-866-5227	303-866-4139
Tracy Kinsella (CDOT Attorney)	303-866-5052	

IMPORTANT YEAR END REMINDERS...

Requests for a “RUSH” will be very limited due to the heavy volume of contracts during June & July. If you have a true “emergency”, then your contract packet should include a memo stating the reason for the emergency.



**“Top Ten List” on
next page**

—Take a few extra minutes to review your contract packets before routing to the Central Approvers.

—Avoid statutory violations (a violation creates extra work for everyone including the delay of your contract). Please remember a vendor should not be working before your contract has been signed by the State Controller.

—Use the “Top Ten Best Practices Checklist” as a final “check” to avoid any unnecessary delays.



**Thanks for your
help!**

The Top Ten “Best Practices” Checklist

by Yvonne Anderson, State Controller’s Office

1. Signatures and signature page:

- Interagency contracts do not need a signature block for the Attorney General.
- Contracts are being routed with photocopied signatures. Page 6-30 of the *State Contract Manual* says no photocopies. To solve this problem, the agency should prepare and have the vendor sign 3 contracts (4 for a lease contract). **NOTE:** Before the contract packet is routed to the Central Approvers, one original copy should be kept by the agency in case the other copies are lost, and an original signed contract is still available for execution.
- Some of the agency signatories are changing the way in which they sign their contracts (for example: they may use only the first initial of the first name instead of the entire first name). As a result, the signature is not exactly the same as found in the ‘*Record of Authorized Signatures*’ maintained by the SCO - Central Contract Unit. If the signatory desires to change his or her contract signature, a new ‘*Record of Authorized Signatures*’ form must be prepared and submitted to the State Controller’s Office.
- Proper attestations are being omitted.

2. Encumbrance Document:

- Some contracts are being routed where the accompanying encumbrance document does not equal the amount set out in the contract. For audit trail purposes, the Central Contract Unit will only approve encumbrances that equal the value of the contract except in cases where a contract is 100% federally funded and for contracts that involve monies from Capital Construction (Fund 461). Any other changes to the encumbrance must be explained in writing, signed by your agency CFO, and submitted with the contract packet.
- Some contracts are being routed with the encumbrance document already approved, presumably by someone in the agency. **Please note that the encumbrance document should be ready for level 3 approval.** The Central Contract Unit will approve the encumbrance when the contract is executed.

3. Pagination and contract references:

- Many contracts fail to paginate the *Special Provisions*. Some fail to have the correct number of pages identified (i.e. the pagination will say “Page 6 of 5” or something similar). Some contracts fail to have any pagination at all!
- Multiple page exhibits need to have some sort of page numbering.
- Many agencies are failing to properly identify exhibits. If a contract refers to “Exhibit A,” then the attached exhibit should be marked on the first page as “Exhibit A.” Also, when more than one exhibit is being attached, each exhibit should be placed in the proper order as part of the contract (i.e. - A, B, C, D or 1, 2, 3, 4 not as D, B, A, C, etc.).
- Amendments, Renewals, and other similar contract modifications often improperly refer to the original contract, or to the wrong provisions in the original contract. Please double-check all references used in the body of the contract. For example, if your renewal letter says “Pursuant to Paragraph 3(a) of the original contract.....” make sure that Paragraph 3(a) of the original contract contains the authority for which you are citing.

4. Communication: A majority of your contract problems can be eliminated or at least the processing time shortened by contacting a Central Contract Approver to ask questions and resolve issues prior to routing the contract for approval. It is always easier to get the contract right the first time rather than having to correct a mistake during the approval process. Please call the Central Contract Unit if you have any question concerning state contracting or attach a memorandum to the contract packet explaining anything that is unusual about the contracting document being routed.

5. **Contract effective date:** Please note that the *Effective Date* in most contracts should be the date the contract is signed by the State Controller. For example, "This contract shall be effective upon approval by the State Controller, or designee, or on (*estimated start date*), whichever is later." If an *estimated start date* is used without the above quoted State Controller caveat, make sure the contract will reach the Central Contract Approvers before the *estimated start date*. If the *estimated start date* passes before the contract reaches a Central Contract Approver, you will be asked to confirm in writing that the vendor has not started work and that a violation of CRS 24-30-202 has not occurred. **Finally, the initial term of the contract should not commence on a date before the effective date.**

6. **Special Provisions:** With the update of the Fiscal Rules on **April 1, 2004**, all agencies should be using the new *Special Provisions* (located in Chapter 3 of the Fiscal Rules). The *Special Provisions* are required in every contract, **except** interagency contracts and lease contracts. These provisions should be part of the body of the contract **and not referred to or attached as an Exhibit** to the contract. In addition, if the *Special Provisions* are modified in any manner, a Fiscal Rule waiver must be requested by your agency CFO. The waiver can be done via an e-mail request from your agency CFO, specifically addressed to your agency FAST Team Representative (located in the State Controller's Office). Be sure to attach a hard copy of the waiver approval to the contract packet when it is routed to the Central Approvers.

7. **Missing documents:** Please remember to attach **ALL** appropriate documents to your contract packet prior to sending them to the Central Contract Approvers. Required documents include: a current screen print of the CLI2 and CLIN; the encumbrance document showing "ready for level 3 approval"; all exhibits/attachments referenced in the contract; program waivers/pre-approval letters/modification form for the Personal Services Review Program; Fiscal Rule waiver request and approval, and if the contract packet is for a **contract amendment**, a copy of the original contract and any other amendments/modification forms (change order, options) related to that specific contract must be included.

8. **Mathematical "best practices":** Mathematical errors are being found in increasing numbers on contracts with multiple amendments. To help eliminate these errors and shorten the contract review and approval time, please **attach a spreadsheet** to the contract packet showing the dollar amount of the original contract and every amendment thereafter.

9. **Contract term "best practices":** Many errors have been noted with the term of the contract. Many amendments are routed to the Central Contract Approvers where the contract's ending date has not been properly extended. In some cases, the contract has actually terminated by its own terms, before an amendment or option to renew is processed.

10. **More "best practices":** **Advance payment:** When a contract includes language allowing for an advance payment to the contractor, please remember to obtain a Fiscal Rule waiver from the State Controller's Office **prior to** forwarding your contract through the central approval process. Your waiver request should be done via email and should be sent from your agency CFO to the State Controller's Office. By following this process, the review of your contract will not encounter any unnecessary delays. **All current contract policies including Advance Payments are located on the SCO website: www.colorado.gov/dpa/dfp/sco/contract/Policy/contractpolicies.htm.**

Scope of work: Be sure that the dates contained in the scope of work **do not conflict** with the time of performance stated in the contract.

Modification Tools: Remember there is an **updated policy** on the use of modifications (effective February 10, 2003). Please note that these modifications are not universal and should not be included in all contracts.



A Note about... Statutory Violations

Ron Keller has joined Phil Holtmann and Yvonne Anderson in reviewing and approving, as appropriate, commitment vouchers that are in violation of CRS 24-30-202 (1) or (3). Ron, the auditor for the State Controller, also has been delegated the authority to approve purchases (after-the-fact) that were made without a valid purchase order.

Contracts that are in violation of statute should continue to be sent to the Central Contract Unit. An explanation of the agency's investigation of a contract violation should be addressed to the State Controller and attached to the contract. Violations that involve an obligation when a purchase order is the required commitment voucher should be addressed and sent to Ron Keller.

It is important that a request address each of the questions listed in the State Controller Policy "Managing Commitment Vouchers That Violate State Statutes". Our review is expedited if the requests follow the question and your response format in the policy. Additional documentation including invoices, if applicable, should be attached to support the request. Please review the current policy requirements set forth below.



State Controller Policy Managing Commitment Vouchers That Violate State Statutes

A policy concerning state agency and institution requirements when a violation of CRS 24-30-202 (1) or (3) has occurred. This situation arises when a liability is incurred by the state or a payment made without a valid commitment voucher.

Background

A Formal Opinion of the State Attorney General (No. 97-2), dated December 23, 1997 clarified the State Controller's authority to manage commitment vouchers that violate state statutes. Upon receipt of this opinion, the State Controller issued a memorandum to all contract signature delegates, dated March 17, 1998. The memorandum contained specific guidelines for state agencies and institutions to follow when processing state contracts where a statutory violation had occurred.

This policy, *Managing Commitment Vouchers that Violate State Statute*, was originally issued as *Managing Contracts that Violate State Statute* on July 12, 1999 and revised on May 1, 2001. This new policy reflects the fact that the State Controller will review all violations of CRS 24-30-203 (1) or (3), regardless of the form of commitment voucher that was required for the procurement.



Article continuation... Statutory Violations

Authority to Execute Commitment Vouchers that Violate State Statute

The authority to approve a commitment voucher in violation of CRS 24-30-202 (1) or (3) is the sole responsibility of the State Controller. This authority has not been delegated to any state agency or institution.

Contract Policy

When a **contract** is the required commitment voucher and the obligation incurred is in violation of CRS 24-30-202 (1) or (3), the Central Contract Unit (CCU) in the State Controller's Office will contact the state agency or institution to determine why the violation occurred. Based on the information received, the CCU will determine the most appropriate way to address the violation. If the CCU determines that the violation is intentional or of a serious nature, the chief fiscal officer (CFO) will be notified. It will be the responsibility of the CFO to investigate the violation, document and submit the results to the State Controller through the chief executive officer, and request the State Controller or the State Controller's Contract Signature Delegate to execute the contract.

The formal request from the CFO through the CEO to will address each of the following items in detail:

1. The circumstances surrounding the commitment to include: the unit and person(s) responsible, funds availability, reasons for delay and any disbursements that have been made.
2. The reason(s) why proper procedures were not followed and the violation occurred.
3. The internal administrative and accounting controls and procedures in place at the state agency or institution for controlling instances of contractual commitments and why these controls and procedures were not sufficient to prevent the violation.
4. Whether all state procurement procedures were followed and whether all other required approvals were obtained and an affirmation that the prices are fair and reasonable.
5. What corrective actions are intended or have been taken to improve internal controls and prevent a recurrence by the organization and the employees involved.



Article continuation... Statutory Violations

Purchase Order Policy

When a **purchase order** is the required commitment voucher and the obligation incurred is in violation of CRS 24-30-202 (1) or (3), the state agency or institution's CFO will be notified. It will be the responsibility of the CFO to investigate the violation and to document the results of the investigation.

The information obtained by the CFO will address each of the following items in detail:

1. The circumstances surrounding the commitment to include: the unit and person or persons responsible, funds availability, reason for delays and disbursements made.
2. The reasons why proper procedures were not followed and why the violation occurred.
3. The internal administrative and accounting controls and procedures in place at the state agency or institution for controlling instances of purchase order commitments and why these controls and procedures were not sufficient to prevent the violation.
4. A description of the terms of the commitment, when it arose, when performance ended, how the pricing was negotiated and evaluated, and copies of any relevant correspondence, documents, invoices, or purchase orders, if available that define the terms of the commitment. If a purchase order is not considered necessary to memorialize the terms of an on-going contractual relationship, please explain why.
5. Whether all state procurement procedures were followed and whether all other required approvals were obtained and an affirmation that the prices are fair and reasonable.
6. What corrective action is planned or taken to improve internal controls and prevent a recurrence by the organization and the employees involved.
7. If similar violations have occurred in the past, please explain why the corrective actions taken have not prevented the problem from recurring.

Once the CFO has reviewed the information provided, determined the reason for the violation, and is satisfied that the corrective action planned or taken is sufficient to prevent future occurrences, the CFO will notify the State Controller and request ratification of the procurement. This notification can be in the form of a memorandum from the CFO to the State Controller or an e-mail from the CFO to the State Controller, or delegate. The notification must summarize the violation, including the amount of the procurement, state why it occurred, and the corrective action taken. Once the State Controller has ratified the procurement, any amount owed the vendor can be processed for payment. It is the responsibility of the CFO to maintain a file containing these commitments that violate State Statutes.



PROCUREMENT CODE UPDATE

CONCERNING GRANTS *EFFECTIVE FEBRUARY 1, 2004*

Procurement and contracting professionals in the State system should note that a change has been made to the Procurement Code/Rules, effective February 1, 2004, concerning grants. To follow is the amended wording to the Rule. Included here, for your information, is the definition of a grant according to the Code. Also included are some examples of situations where the Code would or would not apply.

R-24-101-105-01 has been amended to read:

Applicability- The Colorado Procurement Code and these rules do not apply to the following procurements...(h) The awarding of grants, as the term is defined in §24-101-301(10.5)(A),(B) CRS.

In determining if an award is exempt from the Procurement Code, the definition of "grant" should be carefully noted. (See 24-101-301. DEFINITIONS.)

(10.5) (A) "GRANT" MEANS THE FURNISHING OF ASSISTANCE, INCLUDING FINANCIAL OR OTHER MEANS OF ASSISTANCE, BY THE PURCHASING AGENCY TO ANY PERSON TO SUPPORT A PROGRAM AUTHORIZED BY LAW.

(B) THE TERM "GRANT" DOES NOT INCLUDE:

- (I) A LOAN;
- (II) AN AWARD REQUIRED BY THE TERMS OF A GRANT TO BE AWARDED IN ACCORDANCE WITH THE PURCHASING AGENCY'S PROCUREMENT STATUTES AND REGULATIONS; OR
- (III) AN AWARD WHOSE PRIMARY PURPOSE IS TO PROCURE AN END PRODUCT TO SATISFY A REQUIREMENT OF THE PURCHASING AGENCY, EITHER IN THE FORM OF SUPPLIES, SERVICES, OR CONSTRUCTION.

The following paragraphs contain examples of instances when grant-related awards would be exempt from the Procurement Code and instances when the award would be governed by the Code.

The award would be exempt from the Procurement Code in situations where:

- the State agency is distributing grant funds as the grantor and/or;
- there is specific language in the grant describing how the bid process/vendor selection process should be handled and/or;
- the vendor/contractor was specified in the grant application or the grant.

The award would be governed by the Procurement Code in situations where:

- the grant specifies that the solicitation/award is subject to the Procurement Code and/or;
- the State agency receives grant money as a source of income and uses it to operate.

Please contact the State Purchasing Office at 303-866-6100 if you have any further questions.



Why Does the State Hire Tenant Brokers?

by Donna Barr

Since 1989 the State of Colorado Department of Personnel & Administration has entered into exclusive contracts with real estate brokers to assist state agencies and institutions in negotiating real estate leases. Colorado has been a leader in this area – many other states are just now following suit. Since its inception, tenant broker representation has reduced the workload of not only State Buildings and Real Estate Programs, but also the agencies involved, allowing them to concentrate on their operations rather than on real estate needs. The result has been improved service to the agencies' clients, cost savings, and improved fit between agency needs and real estate occupancies.

Nonetheless, State Buildings and Real Estate Programs is often asked why we use tenant brokers. Here are some of the reasons why.

The advantages.

Hiring an exclusive broker can assist a tenant by:

1. Determining immediate and future space requirements through an in-depth knowledge of the tenant's program;
2. Providing an accurate and complete picture of the market opportunities;
3. Helping tenants objectively evaluate all the options by preparing useful reports and analyses;
4. Establishing a fiduciary relationship, which allows the broker to act as an extension of the tenant;
5. Exercising market leverage as a result of broker's expertise, and creating a competitive environment of many alternatives;
6. Enhancing or preserving future landlord-tenant relationships with the broker conducting negotiations as an intermediary, thereby diminishing any direct confrontation between principals;
7. Creating a single point of contact;
8. Saving time;
9. Assisting in the *whole* transaction process; and, *most importantly*
10. Achieving the best price for the tenant.

What's a "good deal"?

Office-space leasing is significantly more complex than ever before. Alternatives, concessions and incentives dangle like carrots. Should a tenant investigate just a few building alternatives, or should it investigate everything so as not to miss a "good" deal? If the current space is satisfactory, what is the best strategy for negotiating with the current landlord and achieving the best renewal rates as possible? After alternatives are narrowed down to a few, how should they be evaluated so that an apples-to-apples comparison can be made? The factors to evaluate include parking, operating-expense calculations, options (for renewal and expansion), pass-through expenses (the calculations landlords use to charge tenants for common areas, including restrooms, corridors, and lobbies), and tenant-improvement allowances. Furthermore, during recent years the evaluation process has become more complicated due to the large amounts of office space available and the differences between the quoted rental rate and the lower rates that can be negotiated due to the market's softness.

Even with the assistance of a tenant broker, locating the property is the easy part. Negotiating the lease, preparing documents, solving problems and maintaining single-minded focus to represent the tenant's best interest are the tasks that bring to light the value of a tenant representative.

Save time, money and face.

Save Time

Information gathering is critical to any decision making process. In order to negotiate a good lease, tenants need to have an understanding of the overall market, including base rents, vacancy rates, incentives, improvement allowances and various other costs associated with leases, such as common area maintenance, taxes and insurance. Most decision-makers do not have the luxury of devoting substantial portions of their time to a successful office relocation. Tenant brokers can do the majority of information gathering, while decision-makers do just that -- make decisions.

Save money

While money doesn't grow on trees it can sure hide in lease agreements. A good tenant broker can have a dramatic impact on the bottom line whether in signing a new lease or renegotiating an expiring one.

With services paid for by the landlord -- not the tenant -- a tenant broker will help find the most cost effective solution through a variety of tools, including:

- Analyzing the market and properties for the best possible location at the best possible price;
- Negotiating concessions, incentives and improvement allowances;
- Providing information on building systems and their impact on operating expenses;
- Reducing risk and liability by having optimal lease terms that project future needs, as well as current ones;
- Negotiating an exit strategy; and
- Identifying lease provisions hidden in the contract that could cost money over the lease term.

Save face

The concept of "saving face" comes from the East and has to do with the importance of maintaining one's dignity. Tenant representatives can help "save face" by educating tenants on leasing to bringing them to the table informed and ready to negotiate in ways solidly based on the goals and objectives for the tenant's unique needs as well as current market economics.

They can also serve as the buffer between the tenant and the landlord -- sort of the bad guy in the good-cop-bad-cop scenario. The tenant representative can ask the hard questions and be the tough negotiator, if necessary, so the tenant doesn't end up in an adversarial relationship with the landlord. Most experienced brokers will recognize just how far to push negotiations without jeopardizing the transaction.

Who represents whom?

It's important to understand that brokers who list space in office buildings work for the best interests of the landlord. This applies in lease renewals as well. A tenant representative represents the interests of the office user. The tenant representative's job is to ensure that both sides are well represented in the deal.

Tenants usually relocate within a specific market once every five or ten years. Obviously, they cannot compete with the in-depth market knowledge of the office-leasing specialist who is involved with the marketplace on a daily basis. Experienced brokers know not only what is available but also what specific landlords are willing to do in terms of rent, terms, concessions, and a host of other factors. Brokers who know details of prior transactions have invaluable resources for negotiations that are not available by simply asking landlords what they are willing to do.

For example, if a leasing broker knows that a landlord offered a more attractive incentive package to a prior tenant than what is on the table, this is invaluable. Or if the broker suspects that a landlord is having financial difficulties or is always behind on time commitments for tenant build-outs, this information can help clients make much better transactions than if they were unaware.

Furthermore, developers and landlords know that tenants with experienced tenant representation are aware of competing buildings and can switch negotiations if transactions do not proceed smoothly. This alone can save tenants substantial amounts of time and money. A competitive procurement process ensures that tenants are getting the best value for their dollars.

Who pays for the broker?

One way to think of it is to compare tenant brokers with travel agents. A traveler can plan his entire itinerary, check with various airlines, learn the quirks and nuances of the different airlines and their varying policies, check on rental cars, make hotel reservations, coordinate the entire travel package, and still pay the same price as the traveler who uses the services of an experienced travel agent. In both industries, rarely do you get a discount for doing it yourself.

Brokers are paid in the form of a commission. The customary practice is for landlords to pay a brokerage commission to brokers who locate a tenant for the space available upon completion of the lease transaction. So, the landlord writes the check. A small part of the tenant's rent reimburses the landlord over the term of the lease. This is how landlords recoup all their capital costs, such as tenant build outs and base building improvements. So the landlord pays the broker, but the cost is ultimately borne by the tenant.

When you lease office space, you can't avoid this cost.

Here's why . . .

Most office buildings have a leasing agent whether they are outside brokerage firms or in-house staff. These agents are brokers hired by the landlords to fill vacant space. When a lease is signed, the agent is paid a commission for representing the landlord. *There is a brokerage commission in every deal.*

If the tenant is represented by its own broker, a portion of the commission is paid to the tenant's broker. (The landlord's agent receives a percentage as well.) This odd practice actually works to the tenant's benefit, since it allows the tenant to determine whether the broker who is paid the commission represents *the landlord* or represents *you*. You, as tenant, incur no out-of-pocket cost for the services you receive from your tenant broker.

Over the long term, there is an apparent minimal cost since the landlord wants to recoup the commission cost. In a 10-year lease, this amounts to 1-2% of the rent. **If the broker's services don't save you more than this, you've chosen the wrong broker.**

Nevertheless, you may ask . . .

What if we don't have a tenant representative?

You'll still be paying for a commission, the listing agent's commission.

How is it that we are paying for the commission even when we don't have a tenant representative?

Whether or not you have a representative doesn't determine whether the listing agent gets paid. The contract between the landlord and the listing agent does.

Why does the landlord need a broker?

The landlord hires a listing agent to find tenants that will move into the landlord's building at terms most favorable to the landlord, as well as to retain existing tenants.

Can't we just use the landlord's broker?

Sure, but just keep in mind where his loyalties lie. His job and fiduciary obligation is to get the best possible terms for his principal, the landlord - not for you. A tenant representative's job and fiduciary obligation is to get the best possible deal for you.

Okay, so it sounds as if we're going to be funding the commission paid to the listing agent; however, won't the overall commission that we're funding through our rent be smaller if we don't have someone representing us?

Probably not, but it depends upon the terms of the agreement between the landlord and his agent. Usually the listing agreement provides that the agent will hand over a portion of his commission to a tenant's agent if the tenant is represented. It also depends upon whether the landlord retains part of the leasing commissions budgeted in the pro forma to fund any in-house leasing operation. The only certainty is that the landlord's broker isn't keeping the entire commission when you have a tenant representative.

Aren't there savings somewhere if we don't have a tenant representative?

Not usually. Landlords know that in almost all significant transactions there is a real estate firm representing the tenant and landlords factor that into their commission policies and the building pro forma. For the occasional transaction where a tenant is without a tenant representative, landlords view that unclaimed portion of the budgeted commission as an opportunity to pluck low-hanging fruit. It isn't viewed as an obligation to rebate some "commission-equivalent" portion of the rent to the prospective tenant.

Then why is our current landlord so keen on us not bringing in a tenant representative if the commissions aren't his real concern?

Your current landlord knows that your representative will be trying to negotiate the best value for you by looking at other buildings and that he'll have to compete with these other landlords, offering you concessions that he would not have otherwise offered.

Won't the landlord lower the rent if we represent ourselves?

Usually the landlord wants to keep the nominal rental rates high to enhance the future sale value of the building and to lock-in higher rental rates for lease renewals. Lease renewals are a landlord's most profitable transaction if the tenant can be renewed at a higher rental rate. The landlord's out-of-pocket costs for new carpeting and minor re-construction to accommodate a renewing tenant are much lower than when the landlord has to demolish and build out space for a new tenant.

Yes, but if we argue that we can reduce the landlord's commission burden, won't the landlord be willing to offer us a concession to keep a tenant representative out of the picture?

Possibly, but the landlord's reason for any such "concession" to an un-represented tenant would not be to reduce the commission but rather to reap an "above-market" return on your transaction by keeping you un-represented. So long as your landlord doesn't have to seriously compete with other landlords, you will be "above-market."

We're confident in our own ability to negotiate effectively with a landlord, won't we be able to achieve our goals on our own?

It depends on what your goals are. Landlords negotiate from a bottom-line perspective and will meet or beat the market only to the extent that they are forced to do so. The only way to reach a landlord's bottom-line is to convince the landlord that you are ready, willing, and able to go to another building.

We don't want to move, why would we want to involve a tenant representative in negotiations with our landlord to stay in our current building?

If you are not represented by a skilled tenant representative, your current landlord will only offer you token concessions, if that, to keep you in his building. You certainly won't receive the same level of concessions that the landlord is offering to new tenants to move into the building. Landlords perceive that if you have a tenant representative then you must be considering other buildings. Your landlord won't truly believe you're ready, willing, and able to relocate to another building unless you are represented.

This is why all tenants who understand the real estate business are represented by their own brokers. It costs them nothing for the expertise and negotiating savvy provided by a professional who is accountable solely to them.

What services should I expect?

Services provided:

- ü Help analyze space requirements (“needs assessment”) and discuss business terms and issues before entering the market.
- ü Conduct a thorough market search, identify alternatives and solicit and assemble competitive proposals.
- ü Provide a number of useful reports: discounted cash-flow analyses of the various alternatives and evaluations of concessions and incentives, tenant improvement costs that go beyond standard building allowances, parking charges, base rent increases, operating expenses, and options to renew and/or expand.
- ü Set up and conduct tours of the appropriate alternatives.
- ü Assist with evaluation of proposals.
- ü Assist with space planning.
- ü Assist with negotiations and document drafting.
- ü Coordinate lease approval.

The State's Brokers.

The state's brokers are chosen through a Request for Proposals for a three-year contract. An evaluation team made up of representatives of various state agencies and institutions selects the brokers looking at reputation, scope of services offered, market knowledge, analysis capabilities, experience, systems and support personnel available, professionalism, and industry track record.

Contact information for the state's brokers can be found on SBREP web site at: <http://www.colorado.gov/dpa/dfp/sbrep/>. The Real Estate Program Policies and Procedures Manual for Agencies and Institutions can also be located on the web site and contains further detail on the leasing process and use of broker services for state agencies and institutions.



**On the World Wide Web at :
www.sco.state.co.us/**

**CONTRACT PROCEDURES AND MANAGEMENT
MANUAL
[contract/contractprocedures.htm](http://www.sco.state.co.us/contract/contractprocedures.htm)**

**CURE
[cure/cure.htm](http://www.sco.state.co.us/cure/cure.htm)**

**PERSONAL SERVICES REVIEW PROGRAM
AND RELATED FORMS**

www.state.co.us/hrs/contracts/index.htm

The Role of State Purchasing

by **Monica Rahman**
Manager of Procurement Services

HOW WE DIFFER FROM OTHER CONTRACT APPROVERS: The role of State Purchasing Office differs from the role of some of the other contract approvers in several ways. First of all, we only see contracts for agencies with Group I (limited) purchasing delegation, while the other approvers see contracts from a larger number of agencies. Secondly, unlike SCO and the AG, State Purchasing doesn't actually sign contracts; we just approve them. Third, in most cases our purchasing agents have helped the agency with the original IFB, RFP or Sole Source Form, so we usually have some familiarity with the particular procurement before the contract ever arrives. This allows us to turn around contract approvals fairly quickly. Fourth, we are not just approvers, but also customers, because we draft contracts for some of our price agreements and programs such as the Procurement Card.

TURNAROUND TIME FOR CONTRACTS: The goal of the State Purchasing Office is to approve a contract whenever possible within three business days from the time it arrives in the office, unless more information is required from the contracting agency. In that case, the turn around time and approval would be dependent upon how quickly the agency contact can provide the State Purchasing Office with the additional information, documentation or justification.

CONTRACTS WE ARE REQUIRED TO REVIEW: In general, the following contracts must be forwarded to SPO for review:

- New Contracts. In general new, non-construction contracts over \$50,000 from Group I Agencies (that is, those agencies with limited purchasing authority) are forwarded to the State Purchasing Office and are reviewed primarily in regard to compliance with the Procurement Rules.
- Amendments to Contracts. Amendments to Group I contracts over \$50,000 are forwarded to the State Purchasing Office only if they deviate from the original contract, solicitation or Sole Source Form. Amendments that must come to State Purchasing for approval regardless of the dollar value are those that involve: extension of a contract beyond the stated time period or number of optional renewals, changes in scope of work, and price increases not allowed by the terms of the original contract. If there is any doubt, agencies should feel free to forward the contract to us anyway.
- Contracts and Amendments with Terms Exceeding 5 Years. Per the Procurement Rules, justification for any contract term that extends beyond five years must be submitted to the State Purchasing Director for approval. Please note that this rule applies to both Group I and Group II agencies.

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REVIEW PROCESS: Contracts coming into SPO are assigned to the Purchasing Agent who normally handles the particular commodity or service area, who issued the RFP for the agency, or who signed the sole source form. (If that Purchasing Agent will be out of the office for more than a day or two, someone else will look at it.) When reviewing new contracts and any amendments to contracts, the State Purchasing Office looks primarily at the following points:

- Vendor Selection Method. If the contract resulted from a Request for Proposals (RFP), an Invitation for Bid (IFB) or a Documented Quote (DQ), the solicitation number must be referenced. A copy of the original solicitation as well as a copy of the vendor's proposal or bid response should be included. If the vendor selection was based on a Sole Source situation, a copy of the Sole Source Form (that has been *pre-approved and signed* by the State Purchasing Office) with related documentation should be included for internal purposes. If the procured services are covered by a State Price Agreement, the agreement number must be referenced in the contract and any additional terms and conditions attached.
- The Scope of Work. Does the SOW differ from the one detailed in the solicitation, Sole Source justification or Price Agreement? If it does differ, and this is a contract amendment, did the original solicitation/contract allow for changes in scope or for the addition of related products or services.
- Start Date and Term of Contract or Renewal Period. Does the term of the contract exceed the term stated in the solicitation? Did the original solicitation and contract allow for renewals? Does the term of the contract exceed five years and therefore require State Purchasing Director approval per Procurement Rule R-24-103-503?
- Prices/Fee Structure. If this is a new contract, are the prices higher than or is the fee structure different from those listed in the original solicitation or quotation? If this is a renewal, was the issue of price increases addressed in the original solicitation or contract?

ADDITIONAL INFORMATION: Detailed Information related to various procurement issues is available to Purchasing Agents and Facilities Managers in the State system via the internal Lotus Notes/BIDS System program. Some information on procurement-related topics is also available on the State Purchasing website (www.gssa.state.co.us). The main phone number for the State Purchasing Office is 303-866-6100.



MEET THE NEW STATE CONTROLLER

Leslie (Les) Shenefelt

Les was born in Ottumwa, Iowa. He was raised in Kansas attending elementary schools in McCune, Kansas and Navarre, Kansas. Les graduated from Dickinson County Community High School in Chapman, Kansas. After high school, he attended McPherson College, McPherson, Kansas and Colorado State University, Ft Collins, Colorado before graduating from Metropolitan State College of Denver with a BS in Accounting. He received a Masters of Business Administration degree from the University of Colorado - Denver. While at Metro State, he helped form and served as the first president of the Accounting Students Association. Les is licensed in Colorado as a Certified Public Accountant.

After several false starts, Les decided on accounting as a career. Les started with the State of Colorado at the Community College of Denver system in December of 1975. He then worked for Metro State College before moving to OSPB. After a few years at OSPB, he became the Controller for the Division of Labor. He has been with the Department of Labor and Employment for approximately 20 years. Reorganizations of the Department of Labor and Employment found him serving the Department as the Manager of Accounting Services, the Manager of Disbursements and finally as Department Controller. This moved into a Chief Financial Officer position when overseeing the Budget Office was added to the responsibilities.

Les accepted an offer in the winter of 2004 to become the next Colorado State Controller effective July 1, 2004 upon Art Barnhart completing his retirement in June 2004. Les moved from the Department of Labor and Employment to the State Controller's Office on May 3, 2004 to work with Art to transition into the duties of State Controller.

Please join with us in welcoming Les' move to the State Controller's Office in his new position of State Controller. All of us at the SCO look forward to working with Les in his new position, and we are going to try to make the transition for Les and our clients as smooth as possible.

HOLDOVER CLAUSE FOR SERVICE CONTRACTS

by Phil Holtmann, SCO

State agencies often enter into service contracts with vendors or providers for critical services that if stopped would cause a risk to the state or to the individuals that are receiving the services. Often, these types of contracts arrive too late at the State Controller's Office (SCO) to be signed before a previous contract term ends. The SCO has attempted to eliminate this problem by allowing agencies to use option letters to extend contracts for subsequent years, but even this process does not work when a new contract must be drafted.

In order to further alleviate the issue of late contracts and statutory violations the SCO is recommending that agencies incorporate the following holdover language into these service provider contracts:

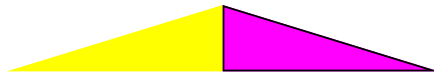
In the event that the state agency desires to continue the services and a replacement contract has not been fully executed by the ending term date of this contract, this contract may be extended unilaterally by the state for a period of up to two months upon written notice to the contractor under the same terms and conditions of the original contract including, but not limited to prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.

DIRECTIONS TO THE DENVER NATIONAL GUARD ARMORY

From I-70—Washington Street Exit to 54th (Corvette Connection on right) to the end of the street and turn right to Franklin then right again a couple of blocks to the Armory (you can't miss the tank on the lawn). Go right to the end of the street to the parking lot and navigate the barriers (they're security devices). Park anywhere in the lot and come into the auditorium at the front of the building.

From Downtown —Broadway/Brighton Blvd to 38th (Pepsi Plant) turn left at 38th and follow around to Washington, under I-70 and then to 54th (Corvette Connection on right), turn right and go to the end of the street to Franklin, right again a couple of blocks to the Armory. Go right to the end of the street to the parking lot and navigate the barriers (they're security devices). Park anywhere in the lot and come into the auditorium at the front of the building.

From North I-25 —Exit at 58th and go to Franklin, right on Franklin to the Armory just beyond 54th, go to the end of the street to the parking lot and navigate the barriers. Go right to the end of the street to the parking lot and navigate the barriers (they're security devices). Park anywhere in the lot and come into the auditorium at the front of the building.



CCIT (Colorado Contract Improvement Team) Meeting

Wednesday, May 26, 2004
Denver National Guard Armory

Agenda

9:00—9:10 am.....Welcome.....Phil Holtmann, SCO

9:15—10:15 am.....Presentation on Independent Contractors.....
by Karen Porsch, Internal Revenue Service

10:15—10:30 am.....B R E A K.....

10:30—11:00 am.....Personal Services Update.....
by Don Fowler

11:00—11:30 am.....SCO Update/End of Year Contracts.....
by Phil Holtmann & Yvonne Anderson

11:30—Noon.....New Business & Questions.....

